



# **Employment Law for Government Contractors: Yes, It's Different.**

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# Presented by

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# About PilieroMazza

PilieroMazza PLLC is a full-service law firm with offices in Washington, DC and Boulder, CO. We are most well known as a government contracting firm and for 25 years we have helped our clients navigate the complexities of doing business with the federal government. We also provide a full range of legal services including advice on corporate, labor and employment, SBA procurement programs, and litigation matters. Our clients value the diverse array of legal guidance they receive from us and our responsiveness as we guide their growth and secure their success.

Our primary practice areas are:

- Government Contracting
- Small Business Programs & Advisory Services
- Labor & Employment
- Business & Corporate
- Litigation
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# Learning Objectives

- Review where to find labor and employment obligations in the Federal Acquisition Regulations (FAR) (FAR Part 22)
- Discuss the various federal laws that FAR Part 22 incorporates & how these obligations apply to government contractors
- Learn how to avoid the most frequent and costly mistakes contractors make

# FAR Part 22: Application of Labor Laws to Government Acquisitions

- Deals with general policies regarding contractor labor relations as they pertain to the acquisition process
- Provides a blueprint for how to comply with labor requirements in the acquisition realm
- Many contractors do not understand the full scope
- Important to carefully review your contract to know which requirements apply

# FAR Part 22: Application of Labor Laws to Government Acquisitions

- Includes 21 subsections, which discuss a wide range of topics:
  - Basic Labor Policies
  - Convict Labor
  - Contract Work Hours
  - Labor Standards for Construction Contracts & Service Contracts
  - Project Labor Agreements
  - Contracts for Materials, Supplies, Articles, and Equipment
  - Equal Employment Opportunity (incl. age, veteran status and disability)
  - Nondisplacement of Qualified Workers under Service Contracts
  - Prohibitions against Child Labor and Trafficking in Persons
  - Notification of Employee rights under the NLRA
  - Employment Eligibility Verification
  - Contractor Minimum Wage and Paid Sick Leave Requirements

# Basic Labor Policies (FAR 22.1)

## ■ Labor (i.e. Union) Relations

- Agencies are to be impartial concerning any disputes between labor and contractor management
- Role of Agency Labor Advisor
- Obligation to prevent reasonably avoidable delays

## ■ Overtime

- Type of contract that matters
- Strictly addresses government payment for overtime
- Approval of the use of overtime may be granted by an agency approving official after determining in writing that overtime is necessary to—
  - 1) Meet essential delivery or performance schedules;
  - 2) Make up for delays beyond the control and without the fault or negligence of the contractor; or
  - 3) Eliminate foreseeable extended production bottlenecks that cannot be eliminated in any other way.

## Convict Labor Policies (FAR 22.2)

- “The development of the occupational and educational skills of prison inmates is essential to their rehabilitation and to their ability to make an effective return to free society. Meaningful employment serves to develop those skills.”
- “It is also true, however, that care must be exercised to avoid either the exploitation of convict labor or any unfair competition between convict labor and free labor in the production of goods and services.”



# Construction and Manual Labor Policies (FAR 22.3-22.5)

- Governs general working conditions for manual labor and construction workers
  - Contracts for new construction, alteration, or repair, including painting and decorating, of public buildings and public works
  - At least those workers whose duties are manual or physical in nature
  
- Laws incorporated:
  - Wage Rate Requirements, formerly the Davis-Bacon Act
  - Contract Work Hours and Safety Standards Act
  - Copeland (Anti-Kickback) Act
  - Executive Orders 13658 (minimum wage) and 13706 (sick leave)

# Construction and Manual Labor Policies (FAR 22.3-22.5)

- Construction wage determinations
  - Types of wage determinations
  - CO must incorporate WD
  - DOL can override CO
  - Certified payrolls
  - Withholding
- Knowingly failing to provide accurate payrolls could result in liability under the False Claims Act.
- Price adjustment clauses included in FAR Part 52

# Service Contract Policies (FAR 22.10-22.12)

- Service Contract Act Requirements
  - Contracts within the U.S. or U.S. territories
  - Applies to contracts “...the principal purpose of which is to provide services...through the use of service employees...”
- Contracting Officer / DOL determines applicability
- Certain statutory exemptions (i.e. carriage of mail, freight, or people by common carriers, many hotel services, real-estate services)
- Must pay requisite wages and fringe benefits incorporated into the contract by a wage determination

# Service Contract Policies (FAR 22.10-22.12)

- Service wage determinations
  - Two types of wage determinations
  - FLSA minimum wage, EO minimum wage rate, and EO sick leave requirements still apply
  - Contractor obligation to choose the correct labor category
  - Provide bona fide fringe benefits correctly
  - Vacation, holidays, hazard pay, uniforms
  - Collective Bargaining Agreements
- As with under construction contracts, price adjustment clauses covered by FAR Part 52

# Service Contract Policies (FAR 22.10-22.12)

- Professional employees (e.g. accountants, lawyers, doctors, engineers)
  - Not subject to FLSA overtime rules
  - Must be compensated “fairly and properly”
  - Not service workers
- Nondisplacement of Qualified Workers
  - Right of first refusal
  - List of service employees 30 days prior to completion of contract
  - Written notice requirement

# Nondiscrimination Policies (FAR 22.8, 22.9, 22.13, and 22.14)

- Intended to ensure compliance with DOL regulations related to affirmative action and protection from certain discrimination and harassment.
  - Race
  - Color
  - Religion
  - Sex
  - National origin
  - Sexual orientation or gender identity
  - Age
  - Veteran Status
  - Disability
- Compliance regulated by OFCCP
- Dollar thresholds apply & requirements can be waived

# Miscellaneous Employee Rights (FAR 22.16, 22.19, and 22.21)

- Must notify employees of rights under the National Labor Relations Act
- Must pay employees the minimum wage for contractors (currently \$10.35)
- Contractors with the relevant clause must have a paid sick leave policy

# Prohibited Labor Policies (FAR 22.15, 22.17, and 22.18)

- No involuntary child labor permitted
- No human trafficking (incl. prostitution, domestic labor, and manual labor, etc.)
  - Applies to all acquisitions, regardless of dollar threshold
  - Additional compliance plan and certification requirements apply to contracts greater than \$500,000
- May not use employees who are not qualified to work in the U.S.



# Drug Free Workplace (FAR 23.5)

- FAR Part 23 (Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace)
- Agreement not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing the contract
- Intersection with the Americans with Disabilities Act and state legalization of marijuana

# Best Practices

- Read the solicitation CAREFULLY
- Once you have identified the applicable FAR provisions, carefully read these as well
- Never ignore a FAR provision because it's confusing or unfamiliar
- Flow down necessary provisions to subcontractors
- When in doubt, contact your CO or counsel

# Thank You.

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